



6351-01-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 30, and 140

RIN 3038-AD88

Enhancing Protections Afforded Customers and Customer Funds Held by Futures

Commission Merchants and Derivatives Clearing Organizations; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Correcting amendments.

SUMMARY: The Commodity Futures Trading Commission (“CFTC”) is correcting final rules published in the Federal Register of November 14, 2013 (“final rules”). Those rules, which adopted new regulations and amended existing regulations requiring enhanced customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs for futures commission merchants, took effect on January 13, 2014. This correction amends erroneous cross-references found in three sections of the final rules. Additionally, this correction amends one section of the final rules to insert language that was in the proposed rulemaking, and which was stated as being adopted in the preamble to the final rules, but was erroneously omitted from the final rule text.

DATES: Effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Thomas Smith, Deputy Director, 202-418-5495, tsmith@cftc.gov, or Mark Bretscher, Attorney-Advisor, 312-596-0529, mbretscher@cftc.gov, Division of Swap Dealer and Intermediary Oversight, Commodity

Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW,
Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 14, 2013 (78 FR 68506), the CFTC published final rules adopting new regulations and amending existing regulations requiring enhanced customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs for futures commission merchants. Those rules in 17 CFR 1.23(d)(2) and 1.23(d)(3) include erroneous cross-references to 17 CFR 1.23(c)(1) and 1.23(c)(2), which do not exist. Instead, the cross-references should be to 17 CFR 1.23(d)(1) and 1.23(d)(2). Accordingly, the Commission is making a correcting amendment which removes the erroneous cross-references to 17 CFR 1.23(c)(1) and 1.23(c)(2), contained in 17 CFR 1.23(d)(2) and 1.23(d)(3), and replaces them with corrected cross-references to 17 CFR 1.23(d)(1) and 1.23(d)(2).

Further, the final rules in 17 CFR 30.7(g)(4) include an erroneous cross-reference to 17 CFR 30.7(h)(2), which should reference 17 CFR 30.7(l), and an erroneous cross-reference to 17 CFR 30.7(g)(2), which should reference 17 CFR 30.7(g)(3). Also, 17 CFR 30.7(g)(5) contains an erroneous cross-reference to 17 CFR 30.7(c)(1) and 30.7(c)(2), which should reference 30.7(g)(3) and 30.7(g)(4). Thus, the Commission is making a correcting amendment to 17 CFR 30.7(g)(4) and 30.7(g)(5) as discussed above.

Additionally, the final rules in 17 CFR 30.7(d)(1) erroneously omitted language that was contained in the proposed rulemaking published on November 14, 2012;¹ and was stated as having been adopted in the preamble to the final rules.² The erroneously

¹ 77 FR 67866 (November 14, 2012).

² See 78 FR 68506 at 68578, fn 592.

omitted language states that a futures commission merchant is not required to obtain an acknowledgment letter from a derivatives clearing organization (“DCO”) if the DCO maintains rules that have been submitted to the Commission and that provide for the segregation of customer funds in accordance with all relevant provisions of the Commodity Exchange Act³ and Commission regulations. Thus, the Commission is making a correcting amendment to 17 CFR 30.7(d)(1) to rectify that error.

Finally, the final rules in 17 CFR 140.91(a)(12) include an erroneous cross-reference to 17 CFR 140.91(a)(8), which should reference 17 CFR 140.91(a)(12). Thus, the Commission is making a correcting amendment to 17 CFR 140.91(a)(12) that removes the erroneous cross-reference to 17 CFR 140.91(a)(8) and replaces it with a cross-reference to 17 CFR 140.91(a)(12).

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 30

Commodity futures, Consumer protection, Currency, Reporting and recordkeeping requirements.

17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, 17 CFR parts 1, 30, and 140 are corrected by making the following correcting amendments:

³ 7 U.S.C. 1 et seq.

**PART 1 – GENERAL REGULATIONS UNDER THE COMMODITY
EXCHANGE ACT**

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a-1, 7a-2, 7b, 7b-3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

2. In §1.23, revise paragraph (d)(2) introductory text, paragraphs (d)(2)(i) and (d)(2)(v), and paragraph (d)(3) introductory text to read as follows:

§1.23 Interest of futures commission merchant in segregated futures customer funds; additions and withdrawals.

* * * * *

(d) * * *

(2) The futures commission merchant files written notice of the withdrawal or series of withdrawals, with the Commission and with its designated self-regulatory organization immediately after the chief executive officer, chief finance officer or other senior official as described in paragraph (d)(1) of this section pre-approves the withdrawal or series of withdrawals. The written notice must:

(i) Be signed by the chief executive officer, chief finance officer or other senior official as described in paragraph (d)(1) of this section that pre-approved the withdrawal, and give notice that the futures commission merchant has withdrawn or intends to withdraw more than 25 percent of its residual interest in segregated accounts holding futures customer funds;

* * * * *

(v) Contain a representation by the chief executive officer, chief finance officer or other senior official as described in paragraph (d)(1) of this section that pre-approved the withdrawal, or series of withdrawals, that, after due diligence, to such person's knowledge and reasonable belief, the futures commission merchant remains in compliance with the segregation requirements after the withdrawal. The chief executive officer, chief finance officer or other senior official as described in paragraph (d)(1) of this section must consider the daily segregation calculation as of the close of business on the previous business day and any other factors that may cause a material change in the futures commission merchant's residual interest since the close of business the previous business day, including known unsecured futures customer debits or deficits, current day market activity and any other withdrawals made from the futures accounts; and

* * * * *

(3) After making a withdrawal requiring the approval and notice required in paragraphs (d)(1) and (2) of this section, and before the completion of its next daily segregated funds calculation, no futures commission merchant may make any further withdrawals from accounts holding futures customer funds, except to or for the benefit of futures customers, without, for each withdrawal, obtaining the approval required under paragraph (d)(1) of this section and filing a written notice in the manner specified under paragraph (d)(2) of this section with the Commission and its designated self-regulatory organization signed by the chief executive officer, chief finance officer, or other senior official. The written notice must:

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PART 30 – FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

3. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6c, and 12a, unless otherwise noted.

4. In §30.7, revise paragraph (d)(1), paragraph (g)(4) introductory text, paragraph (g)(4)(v), and paragraph (g)(5) introductory text to read as follows:

§30.7 Treatment of foreign futures or foreign options secured amount.

* * * * *

(d) Written acknowledgment from depositories. (1) A futures commission merchant must obtain a written acknowledgment from each depository prior to or contemporaneously with the opening of an account by the futures commission merchant with such depository; Provided, however, that a written acknowledgment need not be obtained from a derivatives clearing organization that has adopted and submitted to the Commission rules that provide for the separate holding of foreign futures or foreign options secured amount, in accordance with all relevant provisions of the Act, this part and the regulations and orders promulgated thereunder, of all funds held on behalf of 30.7 customers and all instruments purchased with funds set aside as the foreign futures or foreign options secured amount as provided for under paragraph (h) of this section.

* * * * *

(g) * * *

(4) A futures commission merchant must file written notice of the withdrawal or series of withdrawals that exceed 25 percent of the futures commission merchant's residual interest in 30.7 customer funds as computed under paragraph (l) of this section with the Commission and with its designated self-regulatory organization immediately

after the chief executive officer, chief finance officer or other senior official as described in paragraph (g)(3) of this section pre-approves the withdrawal or series of withdrawals.

The written notice must:

* * * * *

(v) Contain a representation by the chief executive officer, chief finance officer or other senior official as described in paragraph (g)(3) of this section that pre-approved the withdrawal, or series of withdrawals, that to such person's knowledge and reasonable belief, the futures commission merchant remains in compliance with the secured amount requirements after the withdrawal. The chief executive officer, chief finance officer or other appropriate senior official as described in paragraph (g)(3) of this section must consider the daily 30.7 calculation as of the close of business on the previous business day and any other factors that may cause a material change in the futures commission's residual interest since the close of business the previous business day, including known unsecured customer debits or deficits, current day market activity and any other withdrawals made from the 30.7 customer accounts; and

* * * * *

(5) After making a withdrawal requiring the approval and notice required in paragraphs (g)(3) and (4) of this section, and before the next daily secured amount calculation, no futures commission merchant may make any further withdrawals from accounts holding 30.7 customer funds, except to or for the benefit of 30.7 customers, without, for each withdrawal, obtaining the approval required under paragraph (g)(3) of this section and filing a written notice with the Commission under paragraph (g)(4)(vi) of

this section and its designated self-regulatory organization signed by the chief executive officer, chief finance officer, or other senior official. The written notice must:

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PART 140 – ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

5. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2(a)(12), 12a, 13(c), 13(d), 13(e), and 16(b).

6. In §140.91, revise paragraph (a)(12) to read as follows:

§140.91 Delegation of authority to the Director of the Division of Clearing and Risk and to the Director of the Division of Swap Dealer and Intermediary Oversight.

(a) * * *

(12) All functions reserved to the Commission in §41.41 of this chapter. Any action taken pursuant to the delegation of authority under this paragraph (a)(12) shall be made with the concurrence of the General Counsel or, in his or her absence, a Deputy General Counsel.

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Issued in Washington, DC, on July 25, 2014, by the Commission.

Christopher J. Kirkpatrick,
Acting Secretary of the Commission.